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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 SKY-STEVEN THOMAS MILLER,  
11  
12 Plaintiff,

v.

13 PERRY B. BARTRAM, JR., *et al.*,  
14 Defendants.

No. C09-5094 FDB/KLS

ORDER DENYING SECOND MOTION  
TO COMPEL DISCOVERY AND  
MOTION FOR EXTENSION

15 Before the court are Plaintiff's Second Motion to Compel Discovery (Dkt. 36) and  
16 motion for continuance (Dkt. 38). Having reviewed the motions, Defendants' response (Dkt.  
17 36), Plaintiff's response (Dkt. 42) and balance of the record, the Court finds that the motions  
18 should be denied.  
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20 In his motion to compel, Plaintiff requested an order compelling the Defendants to  
21 "produce for inspection and copying the documents that Judge Strombom ordered when granting  
22 plaintiff's motion to compel on October 8, 2009." Dkt. 36 (citing Dkt. 33). Plaintiff did not  
23 include a certification that he, in good faith, conferred or attempted to confer with the person or  
24 party failing to make the discovery in an effort to secure the information or material without  
25 court intervention in accordance with Fed. R. Civ. P. 37(a)(2)(B). Plaintiff references, however,  
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1 letters to counsel in which he has requested production of documents and a 26(i) teleconference.  
2 Dkt. 36-2.

3 Defendants oppose the motion on the grounds that the motion is unclear as to what  
4 Plaintiff seeks, that Plaintiff ignored two requests to set up a telephone conference, and that they  
5 have complied with the court's previous order. Dkt. 39. In response, Plaintiff has more  
6 specifically identified the discovery he seeks and outlines his attempts to obtain the discovery  
7 from Defendants. Dkt. 42.

### 9 DISCUSSION

10 A party may apply to the court for an order compelling discovery "upon reasonable  
11 notice to other parties and all persons affected thereby." Fed. R. Civ. P. 37(a). The motion also  
12 "must include a certification that the movant has in good faith conferred or attempted to confer  
13 with the person or party failing to make the discovery in an effort to secure the information or  
14 material without court intervention." Fed. R. Civ. P. 37(a)(2)(B). In addition, "[a] good faith  
15 effort to confer with a party or person not making a disclosure or discovery requires a face-to-  
16 face meeting or a telephonic conference." Local Rule CR 37(a)(2)(A).

17 Although it was not entirely clear from Plaintiff's initial motion exactly what discovery  
18 was being sought or whether the parties actually conferred about the issues raised in the motion,  
19 with the filing of Defendants' response and Plaintiff's reply, the issues are somewhat clearer and  
20 should enable the parties to now confer and make a good faith effort to resolve this discovery  
21 dispute without Court interference. The Court anticipates that the parties will confer in good  
22 faith and to that end, directs defense counsel to arrange a telephonic conference with the Plaintiff  
23 no later than **February 19, 2010**. If the parties cannot amicably resolve this issue, Plaintiff may  
24 file a motion to compel, and shall include a certification stating that their efforts were  
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1 unsuccessful, and shall identify those areas of disagreement that remain unresolved. The court  
2 will not address any subsequent motion which lacks such a certification.

3 The Court also finds that the discovery deadline shall be extended for the limited purpose  
4 of resolving the questions surrounding the production of documents identified in Dkt. 33.

5 Accordingly, it is **ORDERED**:

6 (1) Plaintiff's second motion to compel (Dkt. 36) is **DENIED**.

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8 (2) The parties are directed to confer and defense counsel shall have a telephonic  
9 conference with Plaintiff no later than **February 19, 2010**, as required by Local Rule CR  
10 37(a)(2)(A).

11 (3) Plaintiff's motion for an extension of the discovery deadline (Dkt. 38) is  
12 **GRANTED in part**; the discovery deadline is extended until **March 5, 2010**, for the limited  
13 purpose of resolving questions surrounding the production of documents identified in Dkt. 33.

14 (4) The Clerk of the Court shall send a copy of this Order to Plaintiff and to counsel  
15 for Defendants.

16 (5) The Clerk of the Court shall send copies of this Order to the Plaintiff and counsel  
17 for Defendants.

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19 DATED this 2nd day of February, 2010.

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23 Karen L. Strombom  
24 United States Magistrate Judge  
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